

State of New Mexico
ENVIRONMENTAL IMPROVEMENT BOARD
Harold Runnels Building, N-2150
1190 St. Francis Drive, P. O. Box 5469
Santa Fe, New Mexico 87502

Environmental Improvement Board Meeting
September 20-October 1, 2010 9:00 a.m.
Old PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501

Members Present:

Gay Dillingham, Chair
Gregory Green, Vice-Chair
Frank Simms, Secretary
Abbas Ghassemi, Member
John Horning, Member
James Gollin, Member
Leland Gould, Member

Members Absent:

None

Others Present:

Tannis Fox, NMED/OGC
Bill Grantham, NMED/OGC
Rita Bates, NMED/AQB
Stephen Vigil, Asst. AG Board Counsel

Mary Uhl, NMED/AQB
Jim Norton, NMED/EPD
Felicia Orth, NMED/OOTS

Please also see attached meeting sign-in sheets

The Chair called the meeting to order at 9:00 a.m.

Item 1. Roll Call

Roll was called and it was noted that a quorum was present.

Item 2. Approval of Agenda

Action: Mr. Green moved Board approval of the agenda. Mr. Gould seconded.

The motion passed unanimously.

Item 3. Approval of August 16, 2010 meeting minutes.

Action: Mr. Green moved Board approval of the minutes. Mr. Gould seconded.

The motion passed unanimously.

Item 4. Public Comment

None.

Item 5. Argument and decision on NMED's motion to dismiss in EIB 10-11 (A), and, if necessary, set a hearing in Helena Chemical's Petition for Hearing on NMED's Refusal to Consider Notice of Intent for Helena's Dry Fertilizer Storage Facility. Robert Soza, Esq., Helena Chemical Company; Tannis Fox, NMED/OGC.

Mr. Soza set out the position of Helena Chemical with respect to the filing of case EIB 10-11 (A). Ms. Fox explained the background of the case and the reasons the Department declined to act with respect to the document filing by Helena in 10-11 (A).

There was a lengthy Board discussion as well as a question and answer period following the presentations by Mr. Soza and Ms. Fox.

The Chair interrupted the proceedings to note that Mr. Vigil, the Board's attorney, had arrived and that it might be necessary to recess this item to allow him time to review the proceedings thus far so the Board could look to him for advice on this issue.

Discussion of the Helena matter continued.

The Chair then announced that the Board would call a recess in this case and proceed to Item 6., the hearing relating to Proposed Revisions to 20.7.20 NMAC, EIB 10-03 (R).

Item 6. Hearing and Possible Decision in re: EIB 10-03 (R), NMED's Petition for Regulatory Change, Proposed Revisions to 20.7.10 NMAC, Drinking Water; Regarding Adoption of 40 CFR, Part 14. Bill Grantham, NMED/OGC; Andy Edmondson, NMED/DWB.

The hearing commenced at 10:20 a.m. Mr. Horning acted as Hearing Officer.

Kathy Townsend Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony were filed and are available for review, as well as public comment correspondence and the hearing transcript in the office of the Environmental Improvement Board Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room 2150, Santa Fe, New Mexico 87505.

The hearing concluded at 10:30 a.m. The meeting was reconvened by the Chair.

A brief Board discussion ensued.

Action: Mr. Green moved Board denial of the Petition. Mr. Simms seconded.

The Chair asked the advice of Mr. Vigil with respect to reopening the hearing in order to ask additional questions of Petitioner. Mr. Vigil indicated that it was permissible to reopen the hearing.

Action: The Chair moved to reopen the hearing in EIB 10-03 (R). Mr. Gould seconded.

The motion passed unanimously.

The hearing reconvened at 10:35 a.m.

Kathy Townsend Court Reporters transcribed the resumption of the hearing.

The reopening of the hearing concluded at 10:43 a.m.

Action: Mr. Green withdrew from consideration his earlier motion to deny the Petition.

The Chair requested that the Board consider presenting a new motion in this matter.

Action: Mr. Green moved Board adoption of all federal regulations up to June 4, 2010. Mr. Horning seconded.

The motion passed unanimously.

Item 5. Continued:

Argument and decision on NMED's motion to dismiss in EIB 10-11 (A), and, if necessary, set a hearing in Helena Chemical's Petition for Hearing on NMED's Refusal to Consider Notice of Intent for Helena's Dry Fertilizer Storage Facility. Robert Soza, Esq., Helena Chemical Company; Tannis Fox, NMED/OGC.

Mr. Vigil set out the relevant statutory references relating to this case. He additionally explained in detail the background of the case and the various matters in dispute. He stated that in his view the situation could be dealt with expeditiously by consolidating the two cases but also acknowledged that consolidation was not the Board's only option. A lengthy Board discussion followed.

Action: **Mr. Green moved that the Board approve consolidation of this case, EIB 10-11 (A), with EIB 10-02 (A), the original Helena Chemical case. Mr. Simms seconded.**

Roll Call Vote:

Mr. Gollin	yes
Mr. Simms	yes
Mr. Horning	yes
Mr. Gould	yes
Mr. Green	yes
Ms. Dillingham	yes

The motion passed unanimously.

There was a brief discussion regarding Agenda Items 8 and 9 and the need for Board action with respect to those items prior to the Board moving on to Agenda Item 7., EIB 10-04 (R) hearing relating to NMED's Petition for Regulatory Change, Proposed New Regulation, 20.2.350 NMAC, Greenhouse Gas Cap and Trade Provisions.

Item 8 . Other business

None

Item 9 . Adjournment

The Chair adjourned the meeting at 12:15 p.m. and announced that the hearing in EIB 10-04 (R) would convene following the lunch break at 1:15 p.m.

Upon returning from the lunch break, the Chair introduced Felicia Orth, Hearing Officer in EIB 10-04 (R), Agenda Item 7 on today's Agenda. Ms. Orth convened the hearing at 1:25 p.m.

Item 7. Hearing in re: EIB 10-04 (R), NMED's Petition for Regulatory Change, Proposed New Regulation, 20.2.350 NMAC, Greenhouse Gas Cap and Trade Provisions. Eric Ames, NMED/ OGC; Louis Rose, Esq., NMOGA; Rick Alvidrez, Esq., PNM and SPS; Eric Groten, Esq., El Paso Electric; Marte Lightstone, Esq., NM Gas Company; Thomas Domme, Esq., NM Gas Company; Sunny Nixon, Esq., City of Farmington and Farmington Electric Utility System; Allison Wood, Esq., Tri-State Generation and Transmission Assoc.; J. Brent Moore, Esq., Tri-State Generation and Transmission Assoc.; Karin Foster, Esq., Independent Petroleum Producers Assn. of NM; Steve Michel, Esq., Western Resource Advocates; John Curl, Esq., Western Resource Advocates; Howard Hutchinson, Coalition of AZ/NM Counties for Stable Economic Growth; Ed Hasely, Energen

Resources Inc.; Mark Mathews, Esq., Grupo Cementos De Chihuahua, SA; Kyle Gibeault, REMA.
Time estimate: 10 days

Kathy Townsend Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony were filed and are available for review, as well as public comment correspondence and the hearing transcript in the office of the Environmental Improvement Board Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room 2150, Santa Fe, New Mexico 87505.


Gay Dillingham, Board Chair